



# Public Service Commission

## State of North Dakota

JUN 03 2010

### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

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3 June 2010

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules  
Case Nos. WM-10-63, PU-10-128, PU-10-129, PU-10-159, and PU-10-167

Dear Mr. Walstad:

Enclosed please find copies of:

- Commission Motion Proposing Amendments, Scheduling Hearing, Issuing Notice of Intent to Amend Rules and Notice of Hearing, and Issuing an abbreviated Notice
- Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Proposed rule changes on the following:
  - Article 69-10, Testing and Safety Division
  - Article 69-06, Energy Conversion and Transmission Facility Siting
  - Chapter 69-09-06, Renewable Electricity and Recycled Energy Tracking System
  - Section 69-09-09-06, Decommissioning plan
  - Section 69-02-01-06, Practice before the commission

If you have any questions please do not hesitate to call.

Best Regards,

Illona A. Jeffcoat-Sacco  
General Counsel

enclosures

8 AD-10-167 Filed 06/03/2010 Pages: 31  
Letter to Legislative Council with enclosures  
Public Service Commission  
Illona Jeffcoat-Sacco

8 PU-10-128 Filed 06/03/2010 Pages: 31 9 PU-10-159 Filed 06/03/2010 Pages: 31  
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9 WM-10-63 Filed 06/03/2010 Pages: 31 8 PU-10-129 Filed 06/03/2010 Pages: 31  
Letter to Legislative Council with enclosures  
Public Service Commission  
Illona Jeffcoat-Sacco

Received in the office of the  
Legislative Council this 3 day of June, 2010  
Bv: ds

APPROVED

DATE: 6-2-10

**MOTION**

June 2, 2010

**Public Service Commission  
Weights and Measures  
Rulemaking**

**Case No. WM-10-63**

**Public Service Commission  
Siting  
Rulemaking**

**Case No. PU-10-128**

**Public Service Commission  
Electric  
Rulemaking**

**Case No. PU-10-129**

**Public Service Commission  
Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

I move the Commission propose the following amendments to the North Dakota Administrative Code, schedule a hearing for 1:30 p.m., on July 14, 2010, issue a Notice of Intent to Amend Administrative Rules and a Notice of Public Hearing, and issue an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law.

**Article 69-10                      Testing and Safety Division**

**Article 69-06                      Energy Conversion and Transmission Facility Siting**

**Chapter 69-09-08                Renewable Electricity and Recycled Energy Tracking System**

**Section 69-09-09-06          Decommissioning plan**

**Section 69-02-01-06          Practice before the commission**

3 AD-10-167 Filed 06/02/2010 Pages: 1  
Commission Motion Proposing  
Amendments, Scheduling Hearing, Issuing  
Notice of Intent to Amend Rules and Issuing  
Notice of Hearing  
Public Service Commission

4 PU-10-159 Filed 06/02/2010 Pages: 1  
Commission Motion Proposing  
Amendments, Scheduling Hearing, Issuing Notice  
of Intent to Amend Rules and Issuing Notice of  
Hearing  
Public Service Commission

4 WM-10-63 Filed 06/02/2010 Pages: 1  
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3 PU-10-128 Filed 06/02/2010 Pages: 1  
Commission Motion Proposing  
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Notice of Hearing  
Public Service Commission

3 PU-10-129 Filed 06/02/2010 Pages: 1  
Commission Motion Proposing  
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Notice of Hearing  
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**Public Service Commission  
Weights and Measures  
Rulemaking**

**Case No. WM-10-63**

**Public Service Commission  
Siting  
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**Case No. PU-10-128**

**Public Service Commission  
Electric  
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**Case No. PU-10-129**

**Public Service Commission  
Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**June 2, 2010**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address proposed amendments to the North Dakota Administrative Code. The hearing will be held at **1:30 p.m., on July 14, 2010, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are:

**Weights and Measures: Case No. WM-10-63**

The North Dakota Metrology Laboratory will officially close on June 30, 2010 and all of the proposed rule changes are related to that closing.

**Siting - Case No. PU-10-128**

Siting proposed rules incorporate a minor change relating to determining corridor size, a proposed rule concerning requests for jurisdictional determinations, and a proposed rule concerning letters of intent.

5 PU-10-159 Filed 06/02/2010 Pages: 2  
Notice of Intent to Amend Admin. Rules  
and Notice of Hearing  
Public Service Commission

4 AD-10-167 Filed 06/02/2010 Pages: 2  
Notice of Intent to Amend Admin. Rules  
and Notice of Hearing  
Public Service Commission

5 WM-10-63 Filed 06/02/2010 Pages: 2  
Notice of Intent to Amend Admin. Rules  
and Notice of Hearing  
Public Service Commission

4 PU-10-128 Filed 06/02/2010 Pages: 2  
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and Notice of Hearing  
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4 PU-10-129 Filed 06/02/2010 Pages: 2  
Notice of Intent to Amend Admin. Rules  
and Notice of Hearing  
Public Service Commission

**Electric: Case No. PU-10-129**

The renewable electricity and recycled energy tracking proposed rule standardizes the content and format of required annual reports of electric retail providers.

**Decommissioning: Case No. PU-10-159**

The proposed rule implements the requirement in 2009 House Bill 1449 (N.D.C.C. § 49-02-27) that the commission's wind farm decommissioning rules address present and future natural resource development.

**Practice and Procedure: Case No. AD-10-167**

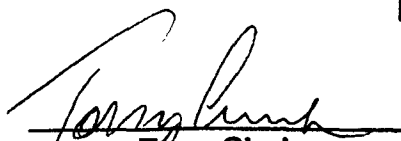
The proposed amendment repeals language regarding practice before the Commission that is inconsistent with the North Dakota Admission to Practice Rules.

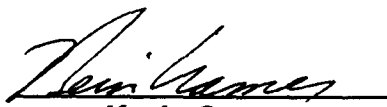
All of the proposed rule changes and the statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or 701-328-2400, toll free 1-877-245-6685. This information is also available to view on the Commission's web site at [www.psc.state.nd.us](http://www.psc.state.nd.us) under "Formal Actions/Case Search".

Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480. The comment period closes 10 days after the hearing. Comments received by July 26, 2010 will be considered.

If individuals require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify, Darrell Nitschke, Executive Secretary, at least 24 hours prior to the hearing at 701-328-2400, Relay North Dakota TTY: 1-800-366-6888, or [dnitschk@nd.gov](mailto:dnitschk@nd.gov).

**PUBLIC SERVICE COMMISSION**

  
**Tony Clark**  
Commissioner

  
**Kevin Cramer**  
Chairman

  
**Brian P. Kalk**  
Commissioner

## NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

June 2, 2010

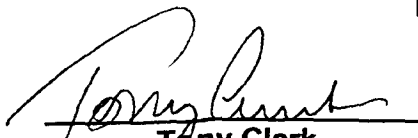
TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to closing the metrology laboratory, determining corridor size, letters of intent, and requests for jurisdictional determinations in energy conversion and transmission facility siting cases, standardizing the content and format of annual reports tracking renewable electricity and recycled energy, implementing the requirement that the commission's wind farm decommissioning rules address present and future natural resource development, and repealing inconsistent language regarding practice before the Commission.

The public hearing will be held at 1:30 p.m., July 14, 2010, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Written comments may be submitted to the Public Service Commission until July 26, 2010.

A copy of the proposed rules may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, or Relay North Dakota TTY: 1-800-366-6888. This information is also available to view on our web site at [www.psc.state.nd.us](http://www.psc.state.nd.us) under Formal Actions/Case Search.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission by telephone or by writing to the address above at least 24 hours prior to the public hearing.

### PUBLIC SERVICE COMMISSION

  
**Tony Clark**  
Commissioner

  
**Kevin Cramer**  
Chairman

  
**Brian P. Kalk**  
Commissioner

5 AD-10-167 Filed 06/02/2010 Pages: 1  
Abbreviated Notice of Intent to Amend Admin. Rules and Notice of  
Hearing  
Public Service Commission

5 PU-10-129 Filed 06/02/2010 Pages: 1  
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6 WM-10-63 Filed 06/02/2010 Pages: 1  
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5 PU-10-128 Filed 06/02/2010 Pages: 1  
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of Hearing  
Public Service Commission

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
2010 Weights and Measures Rules  
Rulemaking**

**Case No. WM-10-63**

**ARTICLE 69-10**

**TESTING AND SAFETY DIVISION**

Chapter	
69-10-01	Weights and Measures - General
69-10-02	Scales
69-10-03	Standards
69-10-04	Service Registration
69-10-05	Oil and Gas Metering Systems [Repealed]

## **CHAPTER 69-10-03 STANDARDS**

Section	
69-10-03-01	National Institute of Standards and Technology (NIST) Handbook No. 44
69-10-03-01.1	National Institute of Standards and Technology (NIST) Handbook No. 44 - NTEP - Exceptions
69-10-03-01.2	National Institute of Standards and Technology (NIST) Handbook No. 105-1 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Class F Field Standard Weights
69-10-03-01.3	National Institute of Standards and Technology (NIST) Handbook No. 105-3 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Graduated Neck-Type Volumetric Field Standards
69-10-03-01.4	National Institute of Standards and Technology (NIST) Handbook No. 105-4 - Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures - Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers
69-10-03-02	Adequate Standards
69-10-03-03	Master Test Weights and Prover Tanks [Repealed]
69-10-03-04	Enforcement [Repealed]
69-10-03-05	Weight Carts [Repealed]
69-10-03-06	Metrology Service [Repealed]
69-10-03-07	Delivery of Standards for Certification [Repealed]
69-10-03-08	Rejection of Standards

**69-10-03-02. Adequate standards.** A standard used to certify any commercial weighing and measuring device must be annually certified as traceable by a NIST-recognized metrology laboratory. The state-metrologist commission may extend the twelve-month recertification interval up to fifteen months.

A current legible copy of the certificate of traceability must be maintained with the commission.

Annual recertification is subject to the following exceptions and conditions:

1. The standards integral to and used for recertification of a commercial automatic bulk-weighing system must be certified traceable by a NIST-recognized laboratory at least once every five years.
2. The volumetric provers used to certify loading-rack meters must be certified traceable by a NIST-recognized laboratory at least once every three years.
3. Unless otherwise approved by the commission, the operator of a coal belt conveyor scale jurisdictional to the commission must conduct a material load test at least once every two years provided that electronic or other simulated load testing is done at least once every three months.
4. A master meter may not be used as a standard to certify commercial LPG devices.
5. Notwithstanding the other provisions of this section, the commission may require recertification of any standard if upon inspection the physical condition of a standard indicates a need for recertification.

**History:** Amended effective April 1, 1992; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 2008; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13



~~69-10-03-05. Weight carts. Effective January 1, 2002, weight carts not already in service in North Dakota and seeking metrology certification must meet the following design specifications: wheelbase must not exceed sixty inches [152.4 centimeters], motors must be electric or powered by gel core batteries, gross weight must not exceed five thousand pounds [2267.95 kilograms], tires must be of solid rubber with smooth tread, and sealing cavities must be capable of containing twenty pounds [9.072 kilograms] of lead adjustment.~~

~~History: Effective January 1, 2002.~~

~~General Authority: NDCC 64-02-03~~

~~Law Implemented: NDCC 64-02-02~~

Repealed effective \_\_\_\_\_.

**~~69-10-03-06, Metrology service.~~** Metrology service at the commission laboratory will only be provided as set out in this section:

1. All metrology service requests must be by appointment only and will be according to the following:
  - a. Testing and safety division metrology;
  - b. State-registered service company metrology;
  - c. North Dakota law enforcement metrology;
  - d. Industrial customer metrology; and
  - e. All other metrology.
2. The director shall send out annual appointment notifications by mail to all state-registered service companies at least thirty days prior to each company's appointment date.
3. If a party with a scheduled metrology appointment needs to cancel that appointment, the party shall notify the commission of the need to cancel at least seven days in advance of the appointment. Appointments cancelled within less than seven days advance notice will lose scheduling priorities. The party canceling a metrology appointment may request a new appointment date at that time.
4. A metrology appointment must be scheduled at least thirty days in advance.
5. A metrology request not previously scheduled may only be serviced as time becomes available.
6. A metrology request for service beyond the scope of the laboratory's recognition level will be referred to an appropriate NIST-recognized metrology laboratory.

**History:** Effective May 1, 2006; amended effective July 1, 2008.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**Repealed effective** \_\_\_\_\_.

~~69-10-03-07. Delivery of standards for certification. Standards delivered to the metrology laboratory for testing and certification must be submitted undamaged and serviceable and must comply with the following:~~

- ~~1. Vehicle scale test carts must be cleaned and painted with all fluid levels topped off to their calibrated reference levels.~~
- ~~2. Cast iron weights must be cleaned and painted following the requirements in NIST Handbook No. 105-1, section 2, as adopted by reference in section 69-10-03-01.2.~~
- ~~3. Provers and test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.~~
- ~~4. Provers must have a simple, sturdy, and adequate leveling means on the legs allowing for adequate adjustments.~~
- ~~5. Provers must have two level indicators mounted on the body of the prover at right angles to each other for leveling purposes.~~
- ~~6. Mild steel provers must be periodically painted as determined by the metrologist, and as recorded in the remarks section on the previous year's calibration report.~~
- ~~7. Mild steel test measures, including sight glasses, must be cleaned inside and out and contain no hydrocarbon residue or other pollutants.~~
- ~~8. Glass F weights must meet the applicable material and design requirements of NIST Handbook No. 105-1, as adopted by reference in section 69-10-03-01.2.~~
- ~~9. Fabricated weights, brass weights, and cast iron weights equal to or less than ten pounds [4.54 kilograms] may not be used.~~
- ~~10. Laminated weights must not be adjusted and must be removed from service when the weights fail to maintain the applicable tolerance.~~
- ~~11. Volume standards placed in service after January 1, 1998, must meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-03-01.3 and 69-10-03-01.4.~~
- ~~12. A volume standard placed in service before January 1, 1998, that has maintained annual certification need not meet the requirements of NIST Handbook No. 105-3 or 105-4, as adopted by reference in sections 69-10-~~

- ~~03-01.3 and 60-10-03-01.4, unless a standard has been removed from service for a period greater than twelve months.~~
- ~~13. Special seals or special tools required for the test or calibration, which is of a unique nature to a particular standard, must be supplied by the standard owner prior to the beginning of the metrology process.~~
  - ~~14. If weights greater than one hundred pounds [45.36 kilograms] or provers with capacities greater than fifty gallons [189.27 liters] are shipped to the metrology laboratory, the weights or provers must be shipped on an open flatbed truck or trailer.~~
  - ~~15. Standards that are not in compliance with any of the above requirements will not be accepted for testing and certification.~~
  - ~~16. A standard that is not tested and certified may not be used to test and certify a commercial device unless a variance permit is obtained from the commission, or unless the standards is recertified.~~

**History:** Effective May 1, 2005; amended effective July 1, 2008.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**Repealed effective** \_\_\_\_\_.

**69-10-03-08. Rejection of standards. ~~Rejected standards~~ Standards rejected by a NIST recognized laboratory must be removed from service as follows:**

1. A standard that has been rejected must be conspicuously marked by sealing, tagging, or painting as appropriate to that standard.
2. A rejected standard may not be used to test and certify a commercial weighing and measuring device. The use of a rejected standard may result in commission enforcement action.
3. A standard not meeting appropriate design criteria may be allowed to remain in service for a limited time, provided a variance permit is obtained from the commission prior to certification or recertification.

**History:** Effective May 1, 2005; amended effective July 1, 2008; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**CHAPTER 69-10-04  
SERVICE REGULATIONS**

Section	
69-10-04-01	Registration of Service Persons
69-10-04-01.1	Registration of Service Companies
69-10-04-02	Application for Registration and Permitting of a Service Person
69-10-04-02.1	Self-Certification
69-10-04-02.2	Application for Registration of a Service Company
69-10-04-02.3	Issuing a Placing in Service Permit
69-10-04-03	Revocation of Registration
69-10-04-04	Reports
69-10-04-05	Standardized Report Forms
69-10-04-06	Quality Control - Witnessing
69-10-04-06.1	Quality Control – Failures <u>[Repealed]</u>
69-10-04-06.2	Procedures for the Quality Control of Registered Service Persons
<u>69-10-04-06.3</u>	<u>Quality Control – Failures</u>
69-10-04-07	Adequate Field Standard Requirements - Exception
69-10-04-08	Devices Taken out of Service <u>[Repealed]</u>

**69-10-04-02. Application for registration and permitting of a service person.** Annual application for registration as a registered service person must be submitted to the commission under the following requirements:

**1. A first-time applicant shall:**

- a. Provide a written history of education and work experience to show that the applicant is fully qualified to repair, test, and certify a commercial weighing or measuring device; and
- b. Complete written tests that must be taken ~~in Bismarck, North Dakota,~~ at a location and time designated by the commission, and must be administered as follows:

(1) The written test will be open book, with seventy-five percent as the minimum passing score. The test material will cover the applicable sections of the adopted 1999 edition of NIST Handbook No. 44, North Dakota Century Code title 64, and North Dakota Administrative Code article 69-10; and

(2) In the case of a test failure, an applicant may retake the tests after a review period of ten working days.

- 2. Each applicant registered by the commission shall utilize adequate standards during the testing and certification of a commercial device.
- 3. An applicant who is applying for renewal of an existing registration shall complete and submit the application at least fifteen days prior to the expiration date of the applicant's existing registration. Each applicant who has renewed an existing registration shall utilize adequate standards during the testing and certification of a commercial device.

**History:** Amended effective April 1, 1992; September 1, 1994; July 1, 1997; January 1, 2002; May 1, 2005; July 1, 2008; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02

**69-10-04-02.3. Issuing a placing in service permit.** Upon acceptance and approval of an application, the commission shall issue a placing in service permit to the applicant. All permits issued under this section remain the property of the commission and must be surrendered upon demand. Permits issued will be either probationary or permanent as defined in this section.

**1. Probationary permits.**

- a. An applicant with less than three months' experience repairing and placing devices into service will receive a probationary permit;
- b. The duration of a probationary permit will be at the discretion of the ~~testing and safety division director~~ commission but will not exceed six months from the date of testing; and
- c. A probationary permitholder shall be accompanied by, and have each placing in service test report cosigned by, a permanent permitholder from the same service company in order for the test report or the placing in service to be considered valid.

**2. Permanent permits.**

- a. An applicant with more than three months' experience repairing and placing devices into service will receive a permanent permit;
- b. An applicant who has been previously tested and issued a permanent permit by the commission within the last five years, but has allowed it to expire, will receive a permanent permit; or
- c. A probationary permitholder who has completed probationary time assigned without receiving any quality control failures will receive a permanent permit.

**History:** Effective May 1, 2005; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02



**69-10-04-06. Quality control – Witnessing Evaluation.** The commission may evaluate the work performed by a registered service person to ensure that the person is performing proper inspections and tests. The evaluation method may be by direct observation of a registered service person placing a commercial device into service or by reinspection of a device previously placed into service by a registered service person. The commission ~~shall~~ may consider the following criteria during the evaluation:

1. The results of a random sampling of at least one inspection and test per year, or more if so ordered by the commission, of the devices certified by a registered service person;
2. Complaints filed against a registered service person, and whether those complaints are valid; and
3. Other factors deemed relevant by the commission.

~~The quality control evaluation must be completed within forty-five days of the date the work is completed by the registered service person and at no charge to the owner of the device.~~

**History:** Effective September 1, 1994; amended effective February 1, 1996; October 1, 1999; July 1, 2008; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13

~~69-10-04-06.1. Quality control - Failures. Quality failures must include the outcome of any actual quality control inspections and tests, and any violations of title 64 of the North Dakota Century Code, title 69 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three consecutive quality control inspections within a twelve-month period, the commission may:~~

- ~~1. Issue either a verbal warning or a formal warning letter requiring remedial action within thirty days from the date of the warning;~~
- ~~2. Schedule a conference with the division director or chief inspector, the registered service person, and that person's supervisor;~~
- ~~3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;~~
- ~~4. Reduce the registered service person's permit status to probationary for up to six months; and~~
- ~~5. Suspend the registered service person's permit and assess a civil penalty.~~

~~The results of any quality control failures and associated enforcement actions may be sent to the individual permitholder's company or to the owner or operator of the affected device.~~

~~Any quality control failures and associated enforcement actions must be kept on file as part of the overall quality control profile of the registered service person for a twelve-month period from the date of the failure.~~

~~History: Effective October 1, 1998; amended effective May 1, 2005.~~

~~General Authority: NDCC 64-02-03~~

~~Law Implemented: NDCC 64-02-02, 64-02-13~~

~~Repealed effective \_\_\_\_\_.~~

**69-10-04-06.2. Procedures for the ~~quality control of evaluating work of~~ registered service persons. A quality control inspection ~~to evaluate the work of~~ a registered service person will be conducted as set forth in this section:**

1. ~~Quality control inspection selection~~ Selection criteria is as follows includes:
  - a. ~~Established by permitholder number;~~
  - b. ~~Set at one percent, or one placing in services, of average annual production;~~
  - ea. ~~Location of the device versus~~ in relation to ~~location of the~~ appropriate ~~state inspector is a controlling factor;~~
  - b. Each registered service person whose annual device testing total is at least 100 will be evaluated on one of every 100 devices tested;
  - dc. ~~Each permitholder registered service person whose annual production device testing total is less than twenty one hundred will be placed into a special pool of which ten percent will have a quality control performed each year assigned a trigger~~ quality control level ~~related to the number of total devices tested the previous year;~~
  - ed. ~~Average annual production must be based upon the previous inspection year totals~~ Receipt of a complaint.
2. ~~A permanent permitholder registered service person who receives multiple quality control inspections within a twelve-month period because of the holder has logged a large number of devices tested placing in services, and; has received not failed a "pass" on the first scheduled quality control inspection for that time period, will receive an "honorary pass" on the second scheduled quality control inspection. If the number of placing services devices tested requires a third quality control inspection for which the holder registered service person receives a "pass" does not fail, the fourth scheduled quality control inspection will again be an "honorary pass".~~
3. ~~The quality control inspection may be based upon the applicable tolerance, acceptance or maintenance tolerance, or design requirements that are applicable to the device.~~
4. ~~The quality control inspection must be completed within forty five days from the date of the permitholder's test report.~~

53. A specific quality control inspection ends when the tested device either fails a portion of the inspection or it passes the inspection.
64. If When a device fails a quality control inspection, the ~~failed quality control failure~~ is will be documented for that ~~permitholder~~, the device is will be rejected, and a follow-up quality control inspection ~~must will~~ be scheduled conducted as soon as practicable ~~on the next device placed into service by the permitholder responsible for the previous quality control failure.~~
7. ~~At the discretion of the division director, weights and measures inspectors may conduct quality control inspections of self-certifying permitholders either by performing a test on that holder's device or by witnessing the testing of a device by the self-certified permitholder.~~

**History:** Effective May 1, 2005; \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13

**69-10-04-06.3. Quality control - Failures.** A quality control evaluation test report that discloses a failure must include any alleged violations of Chapter 64-03 of the North Dakota Century Code, Chapter 69-10-03 of the North Dakota Administrative Code, and any applicable sections of the NIST Handbook No. 44, as adopted by reference in section 69-10-03-01. If a registered service person fails three consecutive quality control inspections within a twelve month period, the commission may:

1. Issue a written warning requiring remedial action within thirty days from the date of the warning;
2. Schedule a conference with the registered service person and that person's employer;
3. Require that the registered service person retake the written tests required for licensing under section 69-10-04-02;
4. Reduce the registered service person's permit status to probationary for up to six months;
5. Suspend the registered service person's permit and assess a civil penalty.

The results of any quality control failures and associated enforcement actions may be sent to the registered service person's employer and to the owner or operator of the affected device.

A quality control evaluation report and a record of any associated enforcement action is filed as part of the overall quality control profile of the affected registered service person and must remain part of that profile for twelve months from the date of the failure.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC 64-02-03

**Law Implemented:** NDCC 64-02-02, 64-02-13

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking**

**Case No. PU-10-128**

**CHAPTER 69-06-02.1  
REQUESTS FOR JURISDICTIONAL DETERMINATION**

<u>Section</u>	
<u>69-06-02.1-01</u>	<u>Filing</u>
<u>69-06-02.1-02</u>	<u>Contents</u>

**69-06-02.1-01. Filing.** A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

**History:** Effective \_\_\_\_\_.  
**General Authority:** NDCC 49-22-18  
**Law Implemented:** NDCC 49-22-07.1

**69-06-02.1-02. Contents.** A request for a jurisdictional determination must contain:

1. A description of the size of the facility,
2. A description of the type of the facility,
3. A description of the area to be served,
4. A map of the study area for the proposed site or corridor,
5. A description of the ownership and operation responsibility of the facility,
6. A description of the facilities and equipment that will be used and how they will be maintained,
7. A description of the owner's or operator's plans for selling, transmitting or distributing the output of the plant,
8. A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities,

9. A description of the owner's and operator's economic evaluation of the facility, and
10. A description of how the site will be leased or other rights of access will be obtained.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC \_\_\_\_\_

**Law Implemented:** NDCC \_\_\_\_\_

## CHAPTER 69-06-03 LETTER OF INTENT

Section	
69-06-03-01	Filing
69-06-03-02	Contents

**69-06-03-01. Filing.** Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission. ~~A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.~~

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1

**69-06-03-02. Contents.** ~~All letters~~ A letter of intent shall ~~shall~~ must contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-07.1



## **69-06-04-02. Designation of sites and corridors.**

### **1. Requirements of order.**

a. An order approving the issuance of a certificate shall contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, and any special conditions the commission may require.

(1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.

(2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.

(3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.

b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless approved otherwise determined by the commission.

c. An order denying the issuance of a certificate shall contain findings that state:

(1) The reason for such denial.

(2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.

**2. Issuance of a certificate.** When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:

a. Describe the authority granted.

b. Contain any special conditions that the commission may require.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities - Siting  
Rulemaking**

**Case No. PU-10-128**

**CHAPTER 69-06-02.1  
REQUESTS FOR JURISDICTIONAL DETERMINATION**

**Section**

<b><u>69-06-02.1-01</u></b>	<b><u>Filing</u></b>
<b><u>69-06-02.1-02</u></b>	<b><u>Contents</u></b>

**69-06-02.1-01. Filing.** A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

**History: Effective** \_\_\_\_\_.

**General Authority: NDCC 49-22-18**

**Law Implemented: NDCC 49-22-07.1**

**69-06-02.1-02. Contents.** A request for a jurisdictional determination must contain:

- 1. A description of the size of the facility.**
- 2. A description of the type of the facility.**
- 3. A description of the area to be served.**
- 4. A map of the study area for the proposed site or corridor.**
- 5. A description of the ownership and operation responsibility of the facility.**
- 6. A description of the facilities and equipment that will be used and how they will be maintained.**
- 7. A description of the owner's or operator's plans for selling, transmitting or distributing the output of the plant.**
- 8. A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities.**

9. A description of the owner's and operator's economic evaluation of the facility, and
10. A description of how the site will be leased or other rights of access will be obtained.

**History:** Effective \_\_\_\_\_.

**General Authority:** NDCC \_\_\_\_\_

**Law Implemented:** NDCC \_\_\_\_\_

**CHAPTER 69-06-03  
LETTER OF INTENT**

Section	
69-06-03-01	Filing
69-06-03-02	Contents

**69-06-03-01. Filing.** Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission. ~~A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.~~

**History:** Amended effective \_\_\_\_\_.  
**General Authority:** NDCC 49-22-18  
**Law Implemented:** NDCC 49-22-07.1

**69-06-03-02. Contents.** ~~All letters~~ A letter of intent shall ~~shall~~ must contain the following:

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4. An estimate of the total cost of construction.

**History:** Amended effective \_\_\_\_\_.  
**General Authority:** NDCC 49-22-18  
**Law Implemented:** NDCC 49-22-07.1

**69-06-04-02. Designation of sites and corridors.**

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c. An order denying the issuance of a certificate shall contain findings that state:

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a. Describe the authority granted.

b. Contain any special conditions that the commission may require.

**History:** Amended effective \_\_\_\_\_.

**General Authority:** NDCC 49-22-18

**Law Implemented:** NDCC 49-22-08

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Public Utilities - Decommissioning  
Rulemaking**

**Case No. PU-10-159**

**69-09-09-06. Decommissioning plan.** Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes any expected effect on present and future natural resource development and how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

**History:** Effective October 1, 2008; \_\_\_\_\_.  
**General Authority:** NDCC 28-32-02, 49-02-27  
**Law Implemented:** NDCC 49-02-27

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Practice and Procedure  
Rulemaking**

**Case No. AD-10-167**

**69-02-01-06. Practice before the commission.**

1. **Party in own interest.** Any party may appear before the commission in the party's own right.
2. **Attorneys.** Attorneys at law who are admitted to practice in North Dakota and, ~~with the commission's permission, attorneys admitted to practice in any other jurisdiction~~ may practice before the commission.
3. **Other persons.** Any other person who possesses the necessary legal or technical qualifications to enable the person to render valuable service may, with the commission's permission, practice before the commission.
4. **Rules of conduct.** All persons appearing before the commission must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota. The commission or a hearing officer may bar a person from appearing before the commission for improper conduct.

**History:** Amended effective September 1, 1992, \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07